

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 6

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2003

INTRODUCED BY

Timothy Z. Jennings

AN ACT

**RELATING TO SEXUAL OFFENSES; PROVIDING A SENTENCE OF LIFE
IMPRISONMENT FOR CRIMINAL SEXUAL PENETRATION IN THE FIRST
DEGREE WHEN THE VICTIM IS A CHILD UNDER THIRTEEN YEARS OF AGE;
CREATING A NEW CLASS OF CRIME PERTAINING TO SEX CRIMES AGAINST
CHILDREN; AMENDING SECTIONS OF THE NMSA 1978.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 30-9-11 NMSA 1978 (being Laws 1975,
Chapter 109, Section 2, as amended) is amended to read:**

"30-9-11. CRIMINAL SEXUAL PENETRATION. --

**A. Criminal sexual penetration is the unlawful and
intentional causing of a person to engage in sexual
intercourse, cunnilingus, fellatio or anal intercourse or the
causing of penetration, to any extent and with any object, of
the genital or anal openings of another, whether or not there**

underscored material = new
[bracketed material] = delete

1 is any emission.

2 B. Criminal sexual penetration does not include
3 medically indicated procedures.

4 C. Criminal sexual penetration in the first degree
5 consists of all sexual penetration perpetrated:

6 (1) on a child under thirteen years of age; or

7 (2) by the use of force or coercion that
8 results in great bodily harm or great mental anguish to the
9 victim.

10 Whoever commits criminal sexual penetration in the first
11 degree, as provided in Paragraph (1) of this subsection, is
12 guilty of a first degree felony for a sexual offense against a
13 child. Whoever commits criminal sexual penetration in the
14 first degree, as provided in Paragraph (2) of this subsection,
15 is guilty of a first degree felony.

16 D. Criminal sexual penetration in the second degree
17 consists of all criminal sexual penetration perpetrated:

18 (1) on a child thirteen to eighteen years of
19 age when the perpetrator is in a position of authority over the
20 child and uses this authority to coerce the child to submit;

21 (2) on an inmate confined in a correctional
22 facility or jail when the perpetrator is in a position of
23 authority over the inmate;

24 (3) by the use of force or coercion that
25 results in personal injury to the victim;

. 148584. 1

underscored material = new
[bracketed material] = delete

1 (4) by the use of force or coercion when the
2 perpetrator is aided or abetted by one or more persons;

3 (5) in the commission of any other felony; or

4 (6) when the perpetrator is armed with a
5 deadly weapon.

6 Whoever commits criminal sexual penetration in the second
7 degree is guilty of a second degree felony.

8 E. Criminal sexual penetration in the third degree
9 consists of all criminal sexual penetration perpetrated through
10 the use of force or coercion.

11 Whoever commits criminal sexual penetration in the third
12 degree is guilty of a third degree felony.

13 F. Criminal sexual penetration in the fourth degree
14 consists of all criminal sexual penetration:

15 (1) not defined in Subsections C through E of
16 this section perpetrated on a child thirteen to sixteen years
17 of age when the perpetrator is at least eighteen years of age
18 and is at least four years older than the child and not the
19 spouse of that child; or

20 (2) perpetrated on a child thirteen to
21 eighteen years of age when the perpetrator, who is a licensed
22 school employee, an unlicensed school employee, a school
23 contract employee, a school health service provider or a school
24 volunteer, and who is at least eighteen years of age and is at
25 least four years older than the child and not the spouse of

underscored material = new
[bracketed material] = delete

1 that child, learns while performing services in or for a school
2 that the child is a student in a school.

3 Whoever commits criminal sexual penetration in the fourth
4 degree is guilty of a fourth degree felony. "

5 Section 2. Section 31-18-15 NMSA 1978 (being Laws 1977,
6 Chapter 216, Section 4, as amended) is amended to read:

7 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
8 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
9 DEDUCTIONS.--

10 A. If a person is convicted of a noncapital felony,
11 the basic sentence of imprisonment is as follows:

12 (1) for a first degree felony for a sexual
13 offense against a child, life imprisonment;

14 [~~(1)~~] (2) for a first degree felony, eighteen
15 years imprisonment;

16 [~~(2)~~] (3) for a second degree felony resulting
17 in the death of a human being, fifteen years imprisonment;

18 [~~(3)~~] (4) for a second degree felony, nine
19 years imprisonment;

20 [~~(4)~~] (5) for a third degree felony resulting
21 in the death of a human being, six years imprisonment;

22 [~~(5)~~] (6) for a third degree felony, three
23 years imprisonment; or

24 [~~(6)~~] (7) for a fourth degree felony, eighteen
25 months imprisonment.

. 148584. 1

underscored material = new
[bracketed material] = delete

1 B. The appropriate basic sentence of imprisonment
2 shall be imposed upon a person convicted [~~of a first, second,~~
3 ~~third or fourth degree felony or a second or third degree~~
4 ~~felony resulting in the death of a human being~~] and sentenced
5 pursuant to Subsection A of this section, unless the court
6 alters [~~such~~] the sentence pursuant to the provisions of
7 Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

8 C. The court shall include in the judgment and
9 sentence of each person convicted [~~of a first, second, third or~~
10 ~~fourth degree felony or a second or third degree felony~~
11 ~~resulting in the death of a human being~~] and sentenced to
12 imprisonment in a corrections facility designated by the
13 corrections department authority for a period of parole to be
14 served in accordance with the provisions of Section 31-21-10
15 NMSA 1978 after the completion of any actual time of
16 imprisonment and authority to require, as a condition of
17 parole, the payment of the costs of parole services and
18 reimbursement to a law enforcement agency or local crime
19 stopper program in accordance with the provisions of that
20 section. The period of parole shall be deemed to be part of
21 the sentence of the convicted person in addition to the basic
22 sentence imposed pursuant to Subsection A of this section
23 together with alterations, if any, pursuant to the provisions
24 of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA
25 1978.

. 148584. 1

underscored material = new
[bracketed material] = delete

1 D. When a court imposes a sentence of imprisonment
2 pursuant to the provisions of Section 31-18-15.1, 31-18-16,
3 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the
4 basic sentence of imprisonment provided pursuant to the
5 provisions of Subsection A of this section, the period of
6 parole shall be served in accordance with the provisions of
7 Section 31-21-10 NMSA 1978 for the degree of felony for the
8 basic sentence for which the inmate was convicted. For the
9 purpose of designating a period of parole, a court shall not
10 consider that the basic sentence of imprisonment was suspended
11 or deferred and that the inmate served a period of imprisonment
12 pursuant to the provisions of Section 31-18-15.1, 31-18-16,
13 31-18-16.1 or 31-18-17 NMSA 1978.

14 E. The court may, in addition to the imposition of
15 a basic sentence of imprisonment, impose a fine not to exceed:

16 (1) for a first degree felony for a sexual
17 offense or a first degree felony, fifteen thousand dollars
18 (\$15,000);

19 (2) for a second degree felony resulting in
20 the death of a human being, twelve thousand five hundred
21 dollars (\$12,500);

22 (3) for a second degree felony, ten thousand
23 dollars (\$10,000);

24 (4) for a third degree felony resulting in the
25 death of a human being, five thousand dollars (\$5,000); or

. 148584. 1

1 (5) for a third or fourth degree felony, five
2 thousand dollars (\$5,000).

3 F. When the court imposes a sentence of
4 imprisonment for a felony offense, the court shall indicate
5 whether or not the offense is a serious violent offense, as
6 defined in Section 33-2-34 NMSA 1978. The court shall inform
7 an offender that the offender's sentence of imprisonment is
8 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37
9 and 33-2-38 NMSA 1978. If the court fails to inform an
10 offender that the offender's sentence is subject to those
11 provisions or if the court provides the offender with erroneous
12 information regarding those provisions, the failure to inform
13 or the error shall not provide a basis for a writ of habeas
14 corpus.

15 G. No later than October 31 of each year, the New
16 Mexico sentencing commission shall provide a written report to
17 the secretary of corrections, all New Mexico criminal court
18 judges, the administrative office of the district attorneys and
19 the chief public defender. The report shall specify the
20 average reduction in the sentence of imprisonment for serious
21 violent offenses and nonviolent offenses, as defined in Section
22 33-2-34 NMSA 1978, due to meritorious deductions earned by
23 prisoners during the previous fiscal year pursuant to the
24 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38
25 NMSA 1978. The corrections department shall allow the

. 148584. 1

underscored material = new
[bracketed material] = delete

1 commission access to documents used by the department to
2 determine earned meritorious deductions for prisoners. "

3 Section 3. Section 31-21-10 NMSA 1978 (being Laws 1980,
4 Chapter 28, Section 1, as amended) is amended to read:

5 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

6 A. An inmate of an institution who was sentenced to
7 life imprisonment as the result of the commission of a capital
8 felony, who was convicted for commission of criminal sexual
9 penetration in the first degree, who was convicted of three
10 violent felonies and sentenced pursuant to Sections 31-18-23
11 and 31-18-24 NMSA 1978 or who was convicted of two violent
12 sexual offenses and sentenced pursuant to Subsection A of
13 Section 31-18-25 NMSA 1978 and Section 31-18-26 NMSA 1978
14 becomes eligible for a parole hearing after he has served
15 thirty years of his sentence. Before ordering the parole of an
16 inmate sentenced to life imprisonment, the board shall:

17 (1) interview the inmate at the institution
18 where he is committed;

19 (2) consider all pertinent information
20 concerning the inmate, including:

21 (a) the circumstances of the offense;
22 (b) mitigating and aggravating
23 circumstances;

24 (c) whether a deadly weapon was used in
25 the commission of the offense;

. 148584. 1

underscored material = new
[bracketed material] = delete

1 (d) whether the inmate is a habitual
2 offender;

3 (e) the reports filed under Section
4 31-21-9 NMSA 1978; and

5 (f) the reports of such physical and
6 mental examinations as have been made while in ~~[prison]~~ an
7 institution;

8 (3) make a finding that a parole is in the
9 best interest of society and the inmate; and

10 (4) make a finding that the inmate is able and
11 willing to fulfill the obligations of a law-abiding citizen.

12 If parole is denied, the inmate sentenced to life
13 imprisonment shall again become entitled to a parole hearing at
14 two-year intervals. The board may, on its own motion, reopen
15 any case in which a hearing has already been granted and parole
16 denied.

17 B. Unless the board finds that it is in the best
18 interest of society and the parolee to reduce the period of
19 parole, a person who was convicted of a capital felony shall be
20 required to undergo a minimum period of parole of five years.
21 During the period of parole, the person shall be under the
22 guidance and supervision of the board.

23 C. An inmate who was convicted of a first, second
24 or third degree felony and who has served the sentence of
25 imprisonment imposed by the court in ~~[a corrections facility]~~

underscored material = new
[bracketed material] = delete

1 an institution designated by the corrections department shall
2 be required to undergo a two-year period of parole. An inmate
3 who was convicted of a fourth degree felony and who has served
4 the sentence of imprisonment imposed by the court in [~~a~~
5 ~~corrections facility~~] an institution designated by the
6 corrections department shall be required to undergo a one-year
7 period of parole. During the period of parole, the person
8 shall be under the guidance and supervision of the board.

9 D. Every person while on parole shall remain in the
10 legal custody of the institution from which he was released,
11 but shall be subject to the orders of the board. The board
12 shall furnish to each inmate as a prerequisite to his release
13 under its supervision a written statement of the conditions of
14 parole that shall be accepted and agreed to by the inmate as
15 evidenced by his signature affixed to a duplicate copy to be
16 retained in the files of the board. The board shall also
17 require as a prerequisite to release the submission and
18 approval of a parole plan. If an inmate refuses to affix his
19 signature to the written statement of the conditions of his
20 parole or does not have an approved parole plan, he shall not
21 be released and shall remain in the custody of the [~~corrections~~
22 ~~facility~~] institution in which he has served his sentence,
23 excepting parole, until such time as the period of parole he
24 was required to serve, less meritorious deductions, if any,
25 expires, at which time he shall be released from that

. 148584. 1

underscored material = new
[bracketed material] = delete

1 [facility] institution without parole, or until such time that
2 he evidences his acceptance and agreement to the conditions of
3 parole as required or receives approval for his parole plan or
4 both. Time served from the date that an inmate refuses to
5 accept and agree to the conditions of parole or fails to
6 receive approval for his parole plan shall reduce the period,
7 if any, to be served under parole at a later date. If the
8 district court has ordered that the inmate make restitution to
9 a victim as provided in Section 31-17-1 NMSA 1978, the board
10 shall include restitution as a condition of parole. The board
11 shall also personally apprise the inmate of the conditions of
12 parole and his duties relating thereto.

13 E. When a person on parole has performed the
14 obligations of his release for the period of parole provided in
15 this section, the board shall make a final order of discharge
16 and issue him a certificate of discharge.

17 F. Pursuant to the provisions of Section 31-18-15
18 NMSA 1978, the board shall require the inmate as a condition of
19 parole:

20 (1) to pay the actual costs of his parole
21 services to the adult probation and parole division of the
22 corrections department for deposit to the corrections
23 department intensive supervision fund not exceeding one
24 thousand twenty dollars (\$1,020) annually to be paid in monthly
25 installments of not less than fifteen dollars (\$15.00) and not

1 more than eighty-five dollars (\$85.00), subject to modification
2 by the adult probation and parole division on the basis of
3 changed financial circumstances; and

4 (2) to reimburse a law enforcement agency or
5 local crime stopper program for the amount of any reward paid
6 by the agency or program for information leading to his arrest,
7 prosecution or conviction.

8 G. The provisions of this section shall apply to
9 all inmates except geriatric, permanently incapacitated and
10 terminally ill inmates eligible for the medical and geriatric
11 parole program as provided by the Parole Board Act. "